



PLANNING COMMISSION STAFF REPORT MAY 11, 2006

Project:	MOUNTAIN MIKE'S PIZZA- (PLN2005-00258)
Proposal:	To consider a Planned District Minor Amendment to P-66-1 for a use permit to add sale of beer and wine within a pizza parlor.
Recommendation:	Approve based on findings and subject to conditions of approval
Location:	35760 Fremont Boulevard in the Centerville planning area. APN 501-1796-001-17 (See aerial photo next page)
Area:	4,100-square-foot existing tenant space within a 123,152-square-foot building in the 12.4-acre Brookvale Shopping Center
People:	Gurpreet Kaur, Mountain Mike's Owner and Applicant Kristy Drake, Pan Pacific, Property Owner Joel Pullen, Project Planner (510) 494-4436; jpullen@ci.fremont.ca.us
Environmental Review:	This project is categorically exempt from the California Environmental Quality Act under Section 15305 of the California Environmental Quality Act.
General Plan:	Neighborhood Commercial
Zoning:	P-66-1 (allowing uses found in the Neighborhood Commercial zoning district most similar to the underlying General Plan designation)

EXECUTIVE SUMMARY:

The applicant proposes to open a "Mountain Mike's" pizza parlor with more than thirty seats serving beer and wine and having five game machines as an accessory use. No expansion of the tenant space is proposed, since it was previously used as a pizza parlor. The location is a tenant space within the Brookvale Shopping Center. The applicable zoning is Planned District P-66-1. The zoning administrator has determined that service of beer and wine in conjunction with a restaurant in this Planned District requires a Conditional Use Permit in accordance with Fremont Municipal Code §8-21003(b) due to the underlying Neighborhood Commercial General Plan designation. Staff recommends approval of this Conditional Use Permit based on findings and subject to conditions of approval.



Figure 1: Aerial Photo (2002) of Project Site and Surrounding Area.



SURROUNDING LAND USES:

- North: 166-unit apartment complex behind shopping center
- South: Intersection of Fremont Boulevard and Nicolet Avenue
- East: Grocery Store, Bank, and Centerville Library
- West: Intersection of Fremont Boulevard and Tamayo Street

BACKGROUND AND PREVIOUS ACTIONS:

Based upon staff research of previous business licenses at this location, this tenant space became "Vincenza's Italian Kitchen," which served alcoholic beverages under ABC license number 41-201538 from April 1988 until its closure and the opening of "Mezzo Mezzo/Mr. Pizza Man" in October of 2000. "Mezzo Mezzo/Mr. Pizza Man" also served alcoholic beverages for five years, closing in November of 2005. In February of 2006, Mountain Mike's Pizza leased the facility and applied for a license from the California Department of Alcoholic Beverage Control (ABC). A public notice has been posted on the facility since March 7, 2006. Although it appears that previous tenants served alcohol without a Conditional Use Permit (CUP), the Zoning Ordinance was revised in November 2000 and a CUP is now required. The Zoning district most similar to the underlying General Plan Land Use for the site now calls for a Conditional Use Permit for "eating places with beer and wine with more than thirty seats."

PROJECT DESCRIPTION:

This Conditional Use Permit would approve this tenant space for the operation of a restaurant serving beer and wine with more than thirty seats (and up to the 4,100-square-foot tenant space's capacity under the building code) with up to five game machines as an accessory use. The restaurant would be open between the hours of 11:00 a.m. and 10:00 p.m., Sunday through Thursday, and 11:00 a.m. to 11:00 p.m. on Fridays and Saturdays.

PROJECT ANALYSIS:

General Plan Conformance:

The existing General Plan land use designation for the project site is Neighborhood Commercial. The proposed project is consistent with the existing General Plan land use designation for the project site because eating and drinking establishments are allowed uses under Policy LU 2.23. The following General Plan Goals, Objectives and Policies are applicable to the proposed project:

FUNDAMENTAL GOAL 8: A diversity of residential, recreational, cultural, employment and shopping opportunities.

Analysis: A pizza parlor with beer and wine represents one type of eating establishment that provides services to the community.

Land Use Goal 2: Commercial development focused in well-defined commercial areas.

Analysis: The Brookvale Shopping Center has been part of an established commercial area for more than 35 years.

Policy LU 2.23: "Eating and Drinking establishments...are permitted" in Neighborhood Commercial Centers.

Analysis: The pizza parlor is clearly a permitted restaurant, with beer and wine being accessory to food service.

Zoning Regulations:

Planned District P-66-1 governs this site. Uses are allowed according to the most similar zoning district to the underlying General Plan designation (Neighborhood Commercial). As set forth in Section 8-21003 of the Fremont Municipal Code (FMC), "[e]ating places with beer and wine with more than 30 seats and/or open after midnight" or "[e]ating places with all alcoholic beverages" are allowed in the Neighborhood Commercial (C-N) district subject to a Conditional Use Permit and in conformance with the applicable provisions of FMC 8-22140 related to cooking odors and particulates for restaurants. In Planned Districts, Conditional Use Permits are processed as minor amendments to the Planned District subject to Planning Commission review and approval. Any restaurant may have up to five game machines allowed as an accessory use under FMC 8-21002(b).

Environmental Review:

This project is categorically exempt from the California Environmental Quality Act under Section 15305 of the California Environmental Quality Act because it is a use permit for a retail facility that constitutes a minor alteration in land use limitations within the existing planned district.

PUBLIC NOTICE AND COMMENT:

Public hearing notification is applicable. A total of 259 notices were mailed to owners and occupants of property within Brookvale Shopping Center and otherwise within 300 feet of the site. The notices to owners and occupants were mailed on April 27, 2006. A Public Hearing Notice was published by *The Argus* on April 27, 2006.

ENCLOSURES:

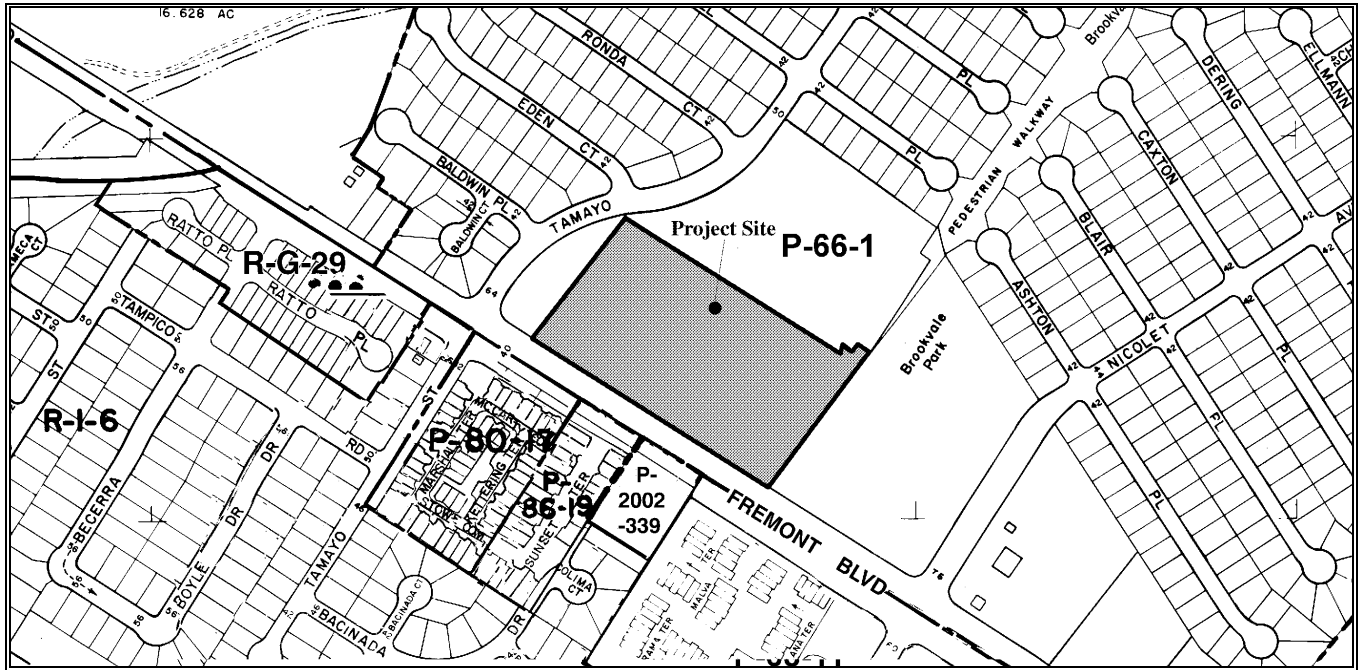
Exhibits: Exhibit "A" Site Plan and Floor Plan
 Exhibit "B" Findings and Conditions of Approval

RECOMMENDATION:

1. Hold public hearing.
2. Find the project is categorically exempt from the California Environmental Quality Act under Section 15305 of the CEQA Guidelines because it is a use permit for a retail facility that constitutes a minor alteration in land use limitations within an existing planned district.
3. Find Conditional Use Permit PLN2006-00258 is in conformance with the relevant provisions contained in the City's existing General Plan. These provisions include the designations, goals and policies set forth in the General Plan's Land Use Chapter as enumerated within the staff report. The project conforms to the goals and objectives of the Neighborhood Commercial District.
4. Approve Conditional Use Permit PLN2006-00258, as shown on Exhibit "A", subject to findings and conditions on Exhibit "B".

Existing Zoning

Shaded Area represents the Project Site



Existing General Plan

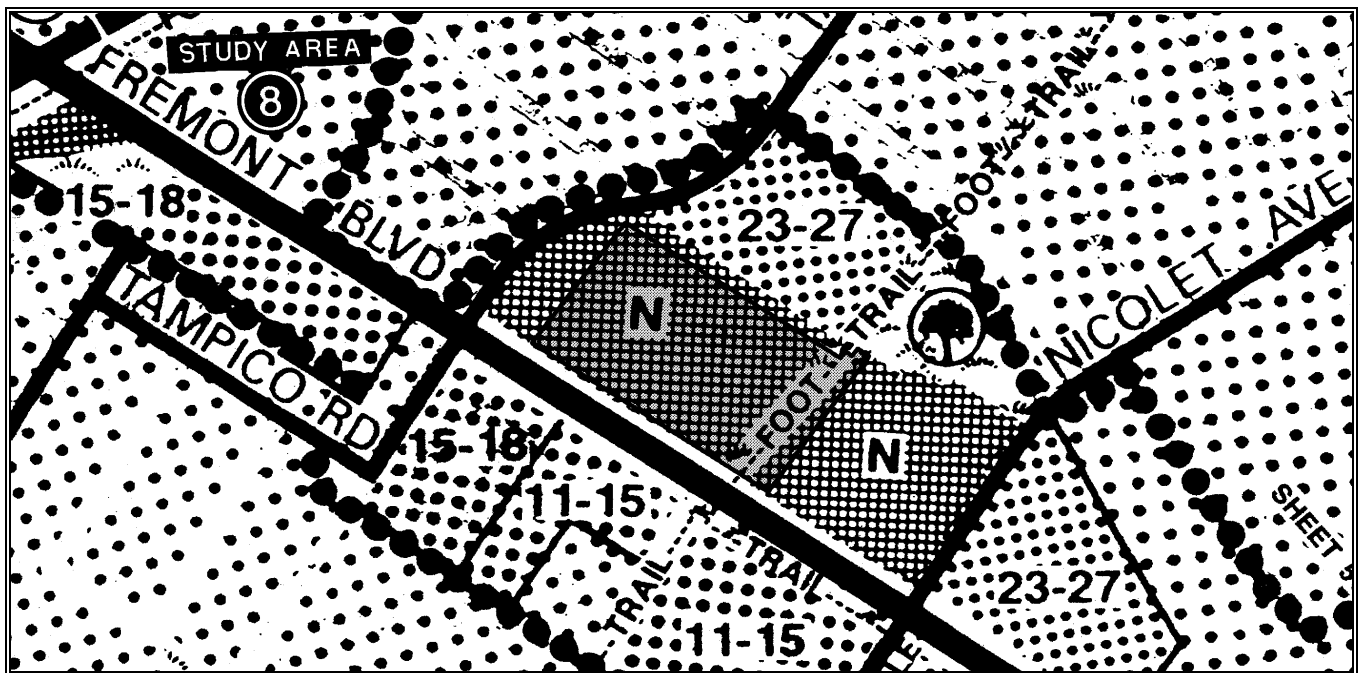


Exhibit "B"
Findings and Conditions of Approval
Conditional Use Permit PLN2006-00258

Findings:

- a. The proposed use is consistent with the General Plan because Eating and Drinking establishments are allowed when land is designated Neighborhood Commercial.
- b. The site is suitable and adequate for the proposed pizza parlor with beer and wine because it is within an existing shopping center with ample parking and adequate conditions of approval are proposed to prevent adverse impacts upon the community.
- c. The proposed use and design would not have a substantial adverse effect on vehicular (including bicycle) or pedestrian circulation or safety, on transit accessibility, on the planned level of service of the street system or on other public facilities or services because the proposed facility is entirely within an existing tenant space, and the proposed changes do not affect access, site circulation, or parking.
- d. The proposed use would not have a substantial adverse economic effect on nearby uses because the General Plan designation anticipates a variety of uses that are compatible within "focused" and "well-defined" vital commercial areas such as Brookvale, including the nearby food stores, service facilities, and other commercial establishments.
- e. The proposed use would not be detrimental to the general welfare of persons residing in the immediate vicinity, the neighborhood or the community at large due to operational conditions proposed and the addition of a condition allowing for revocation of this use permit if such a situation occurs.

Conditions:

1. Conformance with Exhibit "A," subject to findings and conditions of approval herein.
2. Service of *beer and wine only* shall be in conjunction with the primary restaurant use only while food is also being served and conducted in conformance with federal law, California State Law (including Alcoholic Beverage Control licensing review and approval), Alameda County Health Department requirements, and the City of Fremont Building and Zoning Codes in all respects, and as these may be amended from time to time.
3. The rear door of the restaurant shall remain closed at all times except for usage by employees for refuse and recycling disposal, loading, and other similar operations.
4. No more than five game machines may be permitted in the facility in the room marked for such use on Exhibit "A." This area shall remain open and visible from the restaurant's seating area.

5. This use permit shall be subject to revocation or modification by the Planning Commission or City Council in accordance with FMC §8-22512 at such time as any of the following conditions are found to exist:
 - a. Conditions of approval have not been fulfilled.
 - b. The use has resulted in a substantial adverse effect on the health and/or general welfare of users of adjacent or proximate property;
 - c. The use has resulted in a substantial adverse impact on public facilities or services.
6. Hours of operation shall be limited to between 11:00 a.m. and 10:00 p.m. on Sundays through Thursdays and 11:00 a.m. to 11:00 p.m. on Fridays and Saturdays. Requests for modification of business hours shall be subject to Planning Director review and approval. The Planning Director may also refer the matter to the Planning Commission.
7. This Conditional Use Permit shall run with the land at this location only, and be subject to amendment by the Planning Commission at such time as hours of operation or size of the tenant space change.